

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. M-05/08-192  
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 Appeal of )

The petitioner appeals the decision by the Department for Children and Families substantiating a report that the petitioner sexually abused a child. The issues are whether the Department's decision is supported by a preponderance of the evidence and by the pertinent statutory definition of sexual abuse.

1. In July 2007 the Department received reports that M., a then-seventeen-year-old girl, had disclosed that she had been sexually abused by the petitioner seven years ago. After interviewing M, and reviewing reports from the state police who had interviewed both M. and the petitioner, a Department investigator recommended that the report should be substantiated. Following a review of the case, which included a meeting with the petitioner, the Department notified the petitioner in a review decision dated April 4,

2008 that it had determined that the report was substantiated.

2. Following several telephone status conferences, a hearing was held in Barre on September 30, 2008. The Department offered the testimony and case records of its investigator and the testimony of M., the alleged victim. The petitioner, appearing *pro se*, testified in his own behalf.<sup>1</sup>

3. M., who is now eighteen, testified that in July 2007, after remaining silent for several years, she had disclosed the incident to her grandmother and to her high school mental health counselor, the latter of whom had reported the incident to the Department.

4. M. testified that the incident occurred in the summer of 2002, when she was twelve. At the time she was living at a remote campsite with her mother, step-father, her siblings and the petitioner, a family friend whom the petitioner considered "like an uncle". She stated that she and her siblings were often left alone at the campsite with the petitioner when her parents left for the day.

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<sup>1</sup>The matter had been continued for several months to allow the petitioner to attempt to obtain an attorney.

5. On the day in question M. testified that the petitioner approached her while she was sitting alone in a lounge chair away from the campsite. She stated that the petitioner unzipped the front of her bathing suit, and then put his fingers under the crotch of her bathing suit into her vagina. She stated that the petitioner stopped when he heard her younger brother approaching along the path, but that he told her not to tell anyone.

6. M. testified that she saw the petitioner infrequently after that summer, but that she was afraid to tell anyone about what had happened. She stated that she mustered the courage to tell her grandmother and her counselor about it because it had become "harder and harder to keep to myself". M. recently finished high school and is now in the Job Corps.

7. In his testimony the petitioner admitted that he was often alone at the campsite with M. and her siblings, but he vehemently denied ever touching M. inappropriately. He testified that he and M. sometimes clashed because M. "didn't like to do chores". However, he could offer no motive or explanation why M. would fabricate her report at this time.

8. The Department's records show that M. has been completely consistent in her reports of the incident to her

grandmother, her counselor, the state police, and at the hearing. Her testimony and demeanor at the hearing was deemed to be highly credible. Other than the petitioner's denial and the passage of time, there is no evidence or circumstances calling the credibility and reliability of M.'s testimony into question.

ORDER

The Department's decision substantiating the report of sexual abuse is affirmed.

REASONS

The Department is required to investigate reports of child abuse or neglect and to maintain a registry with the names and records of those who are determined to have a "substantiated" finding of abuse or neglect. 33 V.S.A. § 4913 and 4916. A report is substantiated when it is "based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected." 33 V.S.A. § 4912(10).

Any person against whom a report of abuse is substantiated by DCF may appeal to the Human Services Board. In such cases the burden of proof is on the Department. 33 V.S.A. § 4916b.

The statutory sections relied upon by DCF in this matter include the following:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

. . .

(8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

33 V.S.A. § 4912

In this case, there is no question that the acts described by M., if they occurred, constituted sexual abuse by the petitioner within the meaning of the above provisions. However, as with most cases of this nature, there can be only two individuals who will ever know with certainty what occurred. In a *de novo* hearing the Department's burden of proof is to establish the facts by a preponderance of evidence. In determining whether this burden is met, the

relative credibility of the witnesses is crucial. As noted above, the hearing officer deemed M., the alleged victim in this matter, to be highly credible in her testimony regarding the alleged events. Thus, the Department's decision substantiating the report in question as one of sexual abuse must be affirmed.

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